

MA to produce such a comprehensive filing by March 12, 2001 - the date suggested by AT&T - but would need at least until May 15<sup>th</sup> to make its comprehensive filing.

At the end of the off-the-record discussion, the Department Staff took a recess, after which the Hearing Officer announced a procedural schedule (Tr. 10-11), which was later confirmed in the written Hearing Officer Memorandum dated February 9, 2001. The procedural schedule issued by the Hearing Officer was based on a single combined proceeding for Part A and set April 12, 2001, as the date for all parties, including Verizon MA, to submit their direct cases, including TELRIC-based cost models, inputs, pre-filed direct testimony, supporting documentation and proposed rates. Verizon MA appeals from this filing date.

## **II. ARGUMENT**

The Department's regulations allow the Hearing Officer discretion to conduct hearings and to make decisions with regard to procedural matters. 220 C.M.R. § 1.06(6)(a). However, that discretion is not unlimited, and where, as in this case, the Hearing Officer has abused his or her discretion, the Commission will overturn a Hearing Officer's ruling on procedural matters. In this case, the procedural schedule must be overturned, because the Hearing Officer has made a ruling that is both inconsistent with the *Vote and Order* of the Department and establishes a filing date that Verizon MA is unable to meet.

As previously noted, the Department's *Vote and Order* provided for a bifurcated procedure for the investigation of UNE pricing. Phase I, which was to be filed within 30 days of the *Vote and Order* (*i.e.*, on February 12, 2001), was limited to a review of proposed TELRIC models so that the Department could determine the methodological